

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN JOEL WILES,

Defendant-Appellant.

UNPUBLISHED

May 12, 2009

No. 283365

Oakland Circuit Court

LC No. 2007-215793-FH

Before: Borrello, P.J., and Murphy and M.J. Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of false pretenses, greater than \$1,000 but less than \$20,000, MCL 750.218(4)(a), and was sentenced as a fourth habitual offender, MCL 769.12, to 46 months' to 25 years' imprisonment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The complainant first met defendant on April 20, 2007 when defendant was dating her sister-in-law. Defendant introduced himself as Antonio Scarfoe and told the complainant that he was involved in the landscape business and offered to give her a great deal on a brick paver driveway and walkway. In May, defendant told the complainant that he was an owner of two landscaping businesses, Three C's and English Gardens, and showed her several pictures of jobs he had done. The complainant and her husband hired defendant to put in a brick paver driveway and walkway. The complainant chose defendant for the job because he gave her the best estimate out of the bids she received for the project, his degrees and experience in landscaping, and because she trusted him, as he was engaged to her sister-in-law.

On May 25, 2007, the complainant gave defendant a down payment of \$7,000 to buy the brick pavers on the understanding that defendant would start the job the next day. Upon defendant's request, the complainant made the check out to his purported business partner, Kevin Wiles. Defendant cashed the check within an hour after receiving it. Beginning May 27, defendant gave several excuses for the delay of the complainant's project, including that he was sick after attending a wedding, it was raining, his crew was tired, his truck broke down, simply that he and his crew could not make it that day, and that he had to wait until Sunday (the date allegedly stamped on his permit). The complainant became suspicious and performed an Internet search on defendant. She discovered that who she thought was Antonio Scarfoe was actually Kevin Wiles. The complainant made a police report and demanded that defendant

reimburse her the down payment. On June 6, 2007, defendant went to the complainant's home and the police arrested him. Defendant never reimbursed the complainant for her down payment.

Duane Barker, a detective for the Bloomfield Township police, discovered that Three C's landscaping had no record of Antonio Scarfoe or Kevin Wiles in their files. In addition, Detective Barker determined that defendant never received a license for his work and never pulled a permit for his work at the complainant's house.

Defendant first argues on appeal that the prosecution presented insufficient evidence to prove that defendant committed the crime of false pretenses. We disagree.

We review sufficiency of the evidence challenges in a criminal trial de novo. *People v Cox*, 268 Mich App 440, 443; 709 NW2d 152 (2005). Under de novo review, this Court gives no deference to the trial court. *People v Howard*, 233 Mich App 52, 54; 595 NW2d 497 (1998). In reviewing the sufficiency of the evidence presented in a criminal trial, a reviewing court determines whether the evidence, when viewed in the light most favorable to the prosecution, would warrant a trier of fact in finding that all the elements of the crime were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of a crime. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). This Court will not interfere with the jury's role of determining the weight of the evidence or deciding the credibility of the witnesses. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

To support a conviction of false pretenses, the prosecution must prove the following elements: (1) a false representation concerning an existing fact, (2) knowledge by the defendant that the representation is false, (3) use of the representation with an intent to deceive, and (4) detrimental reliance by the victim. *People v Reigle*, 223 Mich App 34, 37-38; 566 NW2d 21 (1997). Defendant contests the third element, arguing that he did not intend to deceive the complainant of her money.

It can be difficult to prove a defendant's state of mind on issues such as knowledge and intent, and thus minimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all of the evidence presented. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

The prosecution presented evidence that defendant falsely represented to the complainant that he was the owner and/or employee of two landscape companies, the Three C's and English Gardens, when in fact he had no association with those companies. In addition, defendant showed the complainant pictures of landscaping work and falsely claimed he had completed the work. The prosecution also presented evidence that defendant falsely represented his education and experience in landscaping. Defendant also gave the complainant a false name, apparently thinking that the complainant might discover his criminal record had he given his true name. Defendant also falsely represented to the complainant that he had acquired a permit for the job when in fact no permit existed. Finally, defendant had the complainant write a check out to his purported "business partner," Kevin Wiles, knowing that this was the only way he could cash the check. Through all of these false representations, defendant lent himself an aura of credibility. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a

rational trier of fact to find beyond a reasonable doubt that defendant intended to deceive the complainant.

Defendant next argues on appeal that trial counsel's failure to object to hearsay evidence denied him a fair trial and constituted ineffective assistance of counsel. We disagree.

Whether a defendant was denied effective assistance of counsel presents a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). We review the trial court's factual findings for clear error and review its constitutional determination de novo. *Id.* A finding is clearly erroneous where, after reviewing the entire record, a definite and firm conviction is left that a mistake has been made. *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003). Under de novo review, this Court gives no deference to the trial court. *Howard, supra* at 54.

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *Strickland v Washington*, 466 US 668, 689; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 326-327; 521 NW2d 797 (1994). To overcome this presumption, the defendant must meet a two-pronged test. The defendant must first show that counsel's performance was deficient as measured against an objective standard of reasonableness under the circumstances and according to prevailing professional norms. *Strickland, supra* at 687-688; *Pickens, supra* at 312-313. Second, the defendant must show that the deficiency was so prejudicial that he was deprived of a fair trial such that there is a reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different. *Strickland, supra* at 687-688; *Pickens, supra* at 309.

"Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. MRE 801(c). *People v Jones (On Rehearing, After Remand)*, 228 Mich App 191; 579 NW2d 82 (1998). Generally, hearsay is not admissible unless it is within an exception provided in the rules of evidence. MRE 802; *People v Stamper*, 480 Mich 1, 3; 742 NW2d 607 (2007).

Defendant first argues that the complainant gave inadmissible hearsay testimony when she testified that her sister told her defendant did not finish a job for her. Contrary to defendant's assertion, the complainant never stated that her sister told her defendant did not finish a job for her. Therefore, no hearsay occurred.

Defendant next contends that trial counsel should have objected to testimony by the complainant that, upon her inquiry, the township told her that no permit had been obtained for her driveway project. Although this testimony was inadmissible hearsay, reversal is not warranted because any error was harmless. *People v McLaughlin*, 258 Mich App 635, 650; 672 NW2d 860 (2003). Whether the township had record of a permit was irrelevant because the evidence at trial revealed that the township did not handle permitting for driveways and kept no record of such permits.

Defendant next argues that his trial counsel should have objected to testimony by the complainant that defendant and her sister-in-law bought a dune buggy after cashing the check for the landscaping. This testimony was not hearsay. The complainant did not testify as to any statement made by an out-of-court declarant. She simply expressed that defendant had a dune

buggy two days after she paid him a down payment for the landscaping and opined that defendant used her money to buy the dune buggy. See MRE 602.

Defendant contends that the complainant's testimony regarding what her Internet search on defendant revealed was inadmissible hearsay. The complainant testified that her Internet search revealed that defendant's actual name was Kevin Wiles and that there was no information corroborating his statements that he worked for a landscaping company. Such testimony is inadmissible hearsay. However, defendant did not dispute either of these statements at trial; therefore, no outcome determinative error occurred by the failure of trial counsel to object to this testimony.

Defendant also argues that the complainant's testimony that she found out that work cannot be performed in the township on Sundays was objectionable hearsay. The trial court record does not sufficiently reveal the circumstances and content of where the complainant received her knowledge that the township does not allow permitting on Sundays. Therefore, we cannot find ineffective assistance of counsel based on trial counsel's failure to object to alleged hearsay.

Finally, defendant argues that Detective Barker's testimony that the Department of Labor, Three C's, and Bloomfield Township all told him information regarding this case amounted to inadmissible, objectionable hearsay. The letter from the Human Resources Manager at Three C's, which was introduced into evidence, revealed that the company had no employment record for defendant. Such a document is admissible under MRE 803(7). The certified letter from the State of Michigan Department of Labor and Economic Growth, which was introduced into evidence and revealed that defendant is not licensed as a builder in the state, was also admissible hearsay under the exception of MRE 803(10). Finally, Detective Barker's testimony that he checked with Bloomfield Township and the Oakland County Road Commission to determine whether any permits had been pulled was also admissible hearsay under the exception of MRE 803(10). Defendant has not shown he was denied the effective assistance of counsel.

Affirmed.

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Michael J. Kelly